IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9564 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHMAD SIDDIQ @ MURGHIWALA HANIFBHAI KURESHI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR AJ DESAI A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

Heard learned advocate Ms. D. R. Kachhavah for the petitioner and learned A.G. P. Mr. A. J. Desai for the respondents Nos. 1, 2 and 3.

1. The detention order dated 27.5.1999 passed by the respondent No. 1, Commissioner of Police, Ahmedabad, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at Annexure - "B" interalia indicate that two criminal cases registered at Kagdapith Police Station vide CR. No. 1/99 and 172/99 dated 1.1.1999 and 7.4.999 respectively. That the said cases are in respect to offences made punishable under Section 392 read with 114 of I.P.C. and Section 399 read with 135(1) of Bombay Police Act. That both the matters are pending for trail in the Court.

Over and above, two witnesses on assurance of their anonymity have given statements dated 25.5.1999, and 26.5.1999, wherein, the alleged incident dated 23.2.1999 and 22.2.1999 respectively are narrated.

3. That on the basis of above stated material, the respondent No. 1 as Detaining Authority has come to the conclusion that the detenu is a "dangerous person" within the meaning of Section 2(c) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order suffers from non application of mind in as much as the day on which the order is served upon the detenu, the detenu was in judicial custody in resepct to criminal cases registered against him and arrested on 7.4.1999. That in the absence of any material to show anticedent history of the petitioner / detenu, and the facts to show that detenu has been indulging into prejudicial activities, the subjective satisfaction reached by the Detaining Authority has been vitiated and has rendered the impugned order invalid.

6. That in the matter of Rameshwar Shaw Vs.

District Magistrate Burdwan , reported vide 1964, SC, 334, the Constitutional Bench has laid down the porposition that the detention order passed against the person who is already in custody per se is not invalid, However, the Detaining Authority should have made apperant in the grounds of detention that in consideration of anticedent history of the detenu and other alleged activities in past proximate in time, are such that on release from the custody, the detenu is likely to engage into prejudicial activities. That such proposition has been followed in the matter of Sanjeevkumar Vs. Union of India, reported vide AIR 1990, 1202.

5. In the instant case, on scrutiny of grounds of detention, suggest that except the registered criminal case against the petitoner, there is no material stated to show rational connection between alleged antisocial activities and the detenu to support the conclusion drawn by the Detaining Authority. Under the circumstances, the subjective satisfaction reached by the Detaining Authority as stated in the last but one paragraph of the grounds of detention that the detenu is likely to apply for bail and having got himself released is likely to indulge into antisocial activities and as such to prevent the detenu forthwith the detention order is necessary can not be said to be a rational conclusion drawn on proper and serious consideration of facts involved in the matter and as such it is difficult to sustain the order.

6. As the petition succeeds on the aforesaid grounds alone, it is not necessary to consider and decide, the other contention raised in the petition.

7. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 27.5.1999 passed by the respondent No. 1 against the petitioner is hereby quashed and set aside. The petitioner Mahmad Siddiq @ Murghiwala Haniwala Hanifbhai Kureshi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

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Date : 22.02.2000. (A. K. Trivedi, J.)
PALLAV.